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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

1085

COLUMBIA BROADCASTING SYSTEM, INC., a Corporation,
Petitioner,

vs.

THE HONORABLE OMER POOS, Chief Judge of the U. S. District Court for the Southern District of Illinois, Southern Division,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The Seventh Circuit denied the petition of Columbia Broadcasting System, Inc. for a writ of mandamus to compel a change of venue for the reason: "we find that petitioner has not shown that respondent has clearly abused his discretionary power pursuant to § 1404(a) and, consequently, mandamus is not appropriate. See **Butterick Co. v. Hubert L. Will**, 316 F. 2d 111, 113 (7th Cir. 1963)."

On June 11, 1969, the Respondent Court found "in a sound exercise of its discretion, that the motion for change of venue in the instant circumstances is not well taken and should be denied." On September 22, 1968,

the Respondent Court denied the CBS Motion for Reconsideration, saying "such Motion is denied for the reason set forth in the original order of June 11, 1969."

STATUTE AND RULES INVOLVED

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

28 U. S. C., § 1404(a)

Considerations governing issuance of extraordinary writs.

"The issuance by the court of any writ authorized by 28 U. S. C. A., § 1651(a), is not a matter of right but of sound discretion sparingly exercised."

Supreme Court Rule 30

Procedure on applications for extraordinary writs.

1. The petition in any proceeding seeking the issuance of a writ by this court authorized by 28 U. S. C. A., § 1651(a), or 28 U. S. C. A., § 2241, shall be prefaced by a motion for leave to file such petition and both shall be printed."

Supreme Court Rule 31

QUESTIONS PRESENTED

1. Whether the extraordinary writ of mandamus may be used to control the decision of the trial court on a matter within the sphere of its discretionary power.

2. Whether the extraordinary writ of mandamus may be invoked in an ordinary question of venue involving the exercise of conceded judicial power.

3. Whether the extraordinary writ of mandamus may be used to review a nonappealable interlocutory order.

4. Whether under a discretionary statute saying that "in the interest of justice a district court may transfer," and a transfer will merely shift the inconvenience from one party to the other and will delay the trial for about a year (this petition for certiorari prevented a trial on January 29, 1970), it is in the interest of justice to decide that the district court must transfer the case.

5. Whether the petition for an extraordinary writ violates paragraphs 1 and 2 of Supreme Court Rule 31 because it is not "prefaced by a motion for leave to file such petition."

STATEMENT OF THE CASE

(a) The Parties

The plaintiff was unsuccessful in obtaining service upon the individual defendant, Donald J. Cannon; and, since he is no longer employed by defendant COLUMBIA BROADCASTING SYSTEM, INC. (hereinafter referred to as CBS) and is not a necessary party, plaintiff voluntarily dismissed him from these proceedings on October 11, 1969, in accordance with Rule 41(a)(1). Although the parties to this case are CBS and Judge Omer Poos, and the case involves a purely procedural point, CBS devotes much of its argument to criticizing the plaintiff Walker. Counsel for CBS allege that General Walker filed 18 suits for defamation, mostly in Southern or rural areas. That is not relevant and possibly was inserted for prejudicial purposes. The suits were filed in Fort Worth; Jacksonville and Clearwater, Florida; Little Rock; New Orleans; Denver; Kansas City; Oxford, Mississippi; Louisville; Atlanta; Milwaukee; St. Louis, Oklahoma City; and Springfield, Illinois. None of these is rural and they are about equally balanced between southern, and northern and western jurisdictions.

(b) **The Place of Suit**

CBS alleges that no party or act involved in this case has any relationship to the Southern District where suit was filed, that "all of defendant's employees reside in Chicago," and that "Station WBBM's primary signal, listening audience and market are outside of the Southern District and are in fact in Cook County."

The party involved in this case, namely CBS, operates a network of many television stations and radio stations, some of which are in cities in the Southern Judicial District of Illinois, such as Springfield, Decatur, Rock Island, Quincy and Peoria.

According to CBS Exhibit A to its Brief in Support of Defendant's Motion for Change of Venue, the Nielsen "Market Coverage Area" for CBS Station WBBM shows that this Station covers the following counties in the Southern Judicial District, namely Bureau, De Witt, Fulton, Henderson, Knox, Livingston, Logan, Marshall, McDonough, McLean, Putnam, Warren and Woodford. This CBS Exhibit also shows that the WBBM broadcasts are heard in the remaining counties in the Southern District.

It is noteworthy that said CBS Nielsen Market Coverage Area or Service Chart, has been cropped and is dated "Fall '60." A complete recent Nielsen Coverage Service Chart may show that CBS Station WBBM covers even more counties in the Southern Judicial District than the 13 counties admitted in said CBS Exhibit A.

In paragraph H of the CBS letter to the Clerk of the U. S. Court of Appeals dated October 16, 1968, CBS admitted that it owns a 42-acre tract of real estate in Madison County, Illinois, which is in the Southern Judicial District of Illinois, and which is the site of the transmitters for the CBS owned KMOX-TV and KMOX AF-FM radio broadcasts. Since CBS actually owns only five

radio and television stations (WBBM, KMOX, WCBS, WGAU and KNXT), it would appear that about 20% of its station-owned broadcast programs originate in said Southern Judicial District from KMOX, and about another 20% of its station-owned broadcast radio programs (from WBBM) are received in said Southern Judicial District.

(c) **The Motion to Transfer**

CBS's Motion to Transfer was filed on October 22, 1968, the last day for pleading to the summons, and without any supporting affidavit. Fifty-five days later and without leave of court, CBS filed said Brief and one affidavit. The CBS Motion to Transfer was not verified.

In paragraph 1, CBS alleged that "its only place of business in Illinois is located at 630 North McClurg Court, in the City of Chicago," and that it is not "doing business" in the Southern District of Illinois.

In its letter to the Clerk of the Court of Appeals dated October 16, 1969, CBS admitted that it had not one but six places of business in Cook County and that it also owned and used a 42-acre tract in the Southern Judicial District of Illinois to broadcast television and radio programs for CBS-owned station KMOX.

Paragraph 2 of the CBS Motion to Transfer asserted that "all witnesses to this cause reside in Chicago." But in a footnote (p. 5) to Exhibit I of said CBS Brief in Support of Motion for Change of Venue, CBS concedes that:

> ". . . the events occurring at the University of Mississippi must to some degree be proved by testimony of persons living outside the State of Illinois."

As CBS concedes, General Walker lives in Dallas. The occurrence witnesses as to whether General Walker said,

"Let's go kill them men" and tried to start an insurrection at Oxford, Mississippi, do not reside in Chicago. Most of them reside in Mississippi; and some, like General Walker, reside in Texas.

The non-timely affidavit which CBS filed 55 days after its motion merely stated that it would be a hardship for announcer Don Cannon to travel from Chicago to Springfield, Illinois. Since Cannon could not be found by the U. S. Marshal for service and CBS has never revealed his residence, he is not a party to this case; and his attendance at the trial is not necessary.

If CBS wants Cannon's testimony, it can easily take his deposition in Chicago or arrange for him to attend the trial in Springfield. The Donald J. Cannon Affidavit was the only affidavit filed by CBS in support of its Motion to Transfer prior to the trial court's denial thereof on June 11, 1969. CBS complains that "General Walker filed no counter-affidavits in opposition to the Motion to Transfer." No such counter-affidavits were required because the only affidavit filed by CBS related to the witness Cannon and to no one else.

CBS, as movant, was required to set out in affidavits the substance of the testimony its alleged inconvenienced witnesses will give. CBS did not do this. The courts refuse to transfer on the basis of conclusory affidavits. **General Portland Cement Co. v. J. Sam Perry** (1953, 7th Cir.), 204 F. 2d 316, 320; **Development Co. of America v. Insurance Co. of North America** (1966), 249 F. Supp. 117, 118.

Any defense of truth would appear to require witnesses who were present at Oxford, Mississippi, and heard Walker. Such witnesses are not apt to be residents of the Northern District of Illinois, and CBS has never named any such.

(d) **The Proceedings Below**

Contrary to the allegations in its petition, the CBS documents filed below did not demonstrate that the Southern District has no relationship to this cause. Instead Exhibit A to said CBS Brief in Support of Defendants' motion for Change of Venue (the Nielsen Market Coverage Area Chart) showed that WBBM covers 13 counties in the Southern Judicial District and is heard in all counties in this District.

Said CBS Brief (p. 4) was predicated on the false assumption that General Walker and his witnesses from Texas and Mississippi "must first fly to Chicago and either transfer planes or utilize another means of transportation to arrive at this forum." This of course is not true and these witnesses could travel by plane or by car to Springfield from the St. Louis Airport quicker and cheaper than by flying over Springfield to Chicago and then returning to Springfield. See Walker Affidavit in Opposition to Motion for Reconsideration, Appendix "A".

CBS's Response to Plaintiff's Request for Admission of Facts (filed herein on November 13, 1969), admits that the telephone dialogue, alleged to be defamatory of plaintiff, "is substantially correctly set forth in Paragraph 4 of Plaintiff's Complaint" and "said dialogue was broadcast by WBBM Radio." Therefore, the expense and hardship, which CBS referred to in its Motion to Transfer, of producing its broadcast records and broadcast witnesses would appear to be unnecessary because the broadcast language is admitted.

After the CBS Motion to Transfer was denied on June 11, 1969, CBS filed a Motion for Reconsideration on July 18 to which it attached the affidavits of Allan W. Kurman and Paul A. Fanning who had worked for CBS when the libel was broadcast on September 16, 1967. Their affi-

davits did not state anything concerning the truth of said CBS broadcast against General Walker and did not contain any facts to show that either affiant would be a material, competent or relevant witness at the trial. General Walker filed an affidavit (Appendix "A") in opposition to the Kurman and Fanning affidavits stating that "the witnesses who will testify for the Plaintiff in this case are from the states of Texas and Mississippi, and a trial of this cause in Springfield, Illinois, will be more convenient and less expensive for Plaintiff and for these witnesses than a trial in Chicago, Illinois." This affidavit also stated that the forum of Springfield, Illinois, was actually much closer and convenient to CBS than the forum of Dallas, Texas, which would also have been a proper venue site for the filing and trial of this case.

(c) **The Order of the Seventh Circuit**

CBS delayed trial of this case for almost a year (namely from October 22, 1968 to September 19, 1969) by requesting both oral argument and briefs on its Motion for Change of Venue and then again on its Motion for Reconsideration. This case has been at issue since February 17, 1969. On September 19, 1969 the following order was entered in open court without objection from counsel for CBS who was present:

> "Jury trial set for Monday, January 19, 1970 at 10:00 a. m. at Springfield."

CBS then filed a Petition for Writ of Mandamus with the Seventh Circuit. This Petition was fully briefed by both sides and was promptly denied on October 21, 1970. CBS waited 88 days and then filed this petition for certiorari only two days before its trial was scheduled to start.

REASONS FOR DENYING THE WRIT

This case does not involve any question of Federal law which has not already been well settled by this Court. In **American Flyers Airline Corporation v. Farrell** (1967), 385 F. 2d 936, 938, the Court of Appeals for the 2d Circuit said:

> ". . . this court has never in its entire history granted one of these writs to compel a transfer."

There the court denied a writ of mandamus to compel a transfer from New York to Oklahoma where the airplane crash in question occurred and Judge Medina said (p. 937):

> "There is the usual aggregation of arguments supporting the contention that considerations of fairness and justice, the convenience of witnesses, stipulations for paying the expenses of transporting witnesses, and the requirements of sound judicial administration so far outweigh the reasons given by Judge McGohey for refusing to order the transfer as to make his ruling a 'clear abuse of discretion.' That Judge McGohey did exercise his discretion is abundantly plain. His opinion below is reported at 42 F. R. D. 341. Moreover, it cannot be doubted that we lack power under the All Writs statute, 28 U. S. C., Section 1651, to consider the pros and cons and issue the writ even if we should conclude that Judge McGohey's order was wrong and that we would have directed the transfer had the original application been addressed to us. The reason, as quoted, from De Beers Consol. Mines, Ltd. v. United States, 325 U. S. 212, 217, 65 S. Ct. 1130, 89 L. Ed. 1566 (1945), by our brother Friendly in his concurring opinion in A. Olinick & Sons v. Dempster Bros., Inc.,

365 F. 2d 439, 446 (2 Cir. 1966) is that **the All Writs statute cannot 'be availed of to correct a mere error in the exercise of conceded judicial power,' but can be used only 'when a court has no judicial power to do what it purports to do**—when its action is not mere error but usurpation of power.'" (Emphasis added.)

As in the instant case, the defendants sought certiorari which was denied by the Supreme Court in 390 U. S. 1012, 20 L. Ed. 2d 162.

Moore's **Federal Practice** summarizes the law on transfer (Vol. 1, No. 0.147):

"If the order denies transfer it, too, is interlocutory.

"These orders because of their interlocutory character, are non-appealable as of right . . . (pp. 1962-1963).

* * * * * * * *

"The supplementary review power conferred on the courts by Congress in the All Writs Act is, however, meant to be used only in the exceptional case . . . (pp. 1966-1967).

* * * * * * * *

"All circuits have been extremely reluctant to find an abuse of discretion by the district court, and thus in the great bulk of cases involving district court discretion the prerogative writ has been dismissed or denied" (p. 1972).

Moore's **Federal Practice** gives these reasons for not reversing a trial court's ruling on transfer:

(1) "where the transfer would merely shift the inconvenience from one party to the other" (Vol. 1, p. 1778, n. 5);

(2) "where after balancing all the factors, the equities lean but slightly in favor of the movant" (Vol. 1, p. 1778, n. 5);

(3) "delay in getting to trial on the merits" and "docket congestion" (Vol. 1, p. 1782, notes 17 and 18);

(4) "The appellate courts should not countenance dilatory tactics by a party in seeking review of orders involving transfer" (Vol. 1, p. 1971);

(5) "Section 1404(a) vests a wide discretion in the district court which should not be exercised originally by this court" (Court of Appeals) (Vol. 1, p. 1780, n. 8);

(6) "The burden of establishing that there should be a transfer, however remains upon the moving party, who still must make a convincing showing" (Vol. 1, p. 1787).

The pertinent cases, such as **American Flyers Airline Corporation v. Farrell** (C. A. 2, 1969), 385 F. 2d 936, cert. denied 390 U. S. 1012, 20 L. Ed. 2d 162; **Bankers Life & Casualty Co. v. Holland** (1953), 346 U. S. 379, 383, 98 L. Ed. 106; **Ex Parte Fahey** (1947), 332 U. S. 258, 260, 91 L. Ed. 2041; **Casper Platt v. Minnesota Mining & Manufacturing Co.** (1964), 376 U. S. 240, 245, 11 L. Ed. 2d 674, 678; **Butterick Company v. Hubert L. Will** (1963), 316 F. 2d 111, 113; and the dicta in **Hubert L. Will v. United States** (1967), 389 U. S. 90, 95, 19 L. Ed. 2d 305, 310, and **Chicago, Rock Island and Pacific Railroad Co. v. Igoe** (1955), 220 F. 2d 299, 303, all show that this court should not mandamus the district court in this type case.

I. **The Respondent and Court of Appeals Followed the Transfer Terms of Section 1404(a).**

CBS has complained that "the district court did not follow the command of Section 1404(a)." There is no command in 1404(a). It reads:

> "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U. S. C., § 1404(a).

Please note the non command words "**may** transfer." A Federal district judge has "discretionary power vested in him by Congress to rule upon a motion to transfer under § 1404(a)." **James B. Parsons v. Chesapeake & Ohio Railway Co.** (1963), 375 U. S. 71, 74, 11 L. Ed. 137, 139.

The words "in the interest of justice" in Section 1404(a) include "delay in getting to trial on the merits." See 1 Moore's **Federal Practice**, p. 1782, n. 17 and cases there cited.

The instant case was set for jury trial on Monday, January 19, 1970, at Springfield, and is still ahead of nearly all pending cases on the trial docket. If transferred to Chicago, it would be delayed about a year in getting to trial since it would come behind the pending 1,944 civil and 493 criminal cases awaiting trial in the Northern District. See Report of the Director of the Administrative Office of the U. S. Courts for period ending September 30, 1969, Tables C 1 and D 1.

That a delay in getting to trial resulting from a transfer is not "in the interest of justice" is well-stated in **Metropolitan Life Insurance Co. v. Potter Bank & Trust Co.** (1955 Penn.), 135 F. Supp. 645, 646-647:

> "[4] Cases on our nonjury calendar are now being tried promptly. We have already set this case for trial. There is no reason why the deposition of any unwilling witness who could not be subpoenaed to appear in Pittsburgh could not be taken and used as evidence in this case. To transfer the case to another district would not be in the interest of justice. The interest of justice would best be served by bringing

cases to trial and not by delaying trial. Accordingly, the motion for transfer is denied and appropriate order setting this case for the week beginning November 28, 1955, will be entered."

We were unable to find a single case where a transfer to an **adjoining** district (which Petitioner is requesting) was granted "for the convenience of parties and witnesses." Where such convenience was considered a factor, the transfer was always to a district which was not adjacent or close. In **Swanson v. Badger Mutual Insurance Co.** (1967), 275 F. Supp. 544, the court denied a request, based on inconvenience to defendants, to transfer the case from the Northern District of Illinois to the adjoining Southern District of Wisconsin, holding (p. 548) "the inconvenience to the defendants is not of sufficient weight to call for a change of venue."

The expense of Defendant's witnesses in traveling from Chicago to Springfield is matched by the expense of Plaintiff's witnesses in traveling from Springfield to Chicago. The hotel room and food rates in Chicago are probably somewhat higher than in Springfield. On balance, there would not appear to be any significant difference between the adjoining Northern and Southern Districts of Illinois concerning the convenience of the parties and witnesses.

The order entered by Respondent Court in denying the Motion for Transfer on June 11 stated that it considered the "court trial docket calendars, number and locality of witnesses, among other matters, . . ." and gave "due consideration of all points raised in this matter by both parties." It is respectfully submitted that the statutory criteria were considered, and the Court exercised its discretionary power in accordance with applicable law. Even if, as alleged by Petitioner, the District Court used an inappropriate factor or criteria, this would not suffice

to empower a transfer. In **Casper Platt v. Minnesota Mining & Manufacturing Company** (1964), 376 U. S. 240, 245, 11 L. Ed. 2d 674, 678, this Court said:

> "The District Court's use of an inappropriate factor did not empower the Court of Appeals to order the transfer. . . . Extraordinary writs are 'reserved for really extraordinary causes,' Ex parte Fahey, 332 U. S. 258, 260, 91 L. Ed. 2041, 2043, 67 S. Ct. 1558 (1947), and then only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' Roche v. Evaporated Milk Assn., 319 U. S. 21, 26, 87 L. Ed. 1185, 1190, 63 S. Ct. 938 (1943). Here, however, the Court of Appeals undertook a de novo examination of the record and itself exercised the discretionary function which the rule commits to the trial judge. This the court should not have done since **the writ cannot be used 'to actually control the decision of the trial court.'** Bankers Life & Casualty Co. v. Holland, 346 U. S. 379, 383, 98 L. Ed. 106, 111, 74 S. Ct. 145 (1953)." (Emphasis added.)

Trial in the Southern District of Illinois would necessitate a "smaller amount of expenses required for willing witnesses" of the Plaintiff and a little more for the willing witnesses of the Defendant. As stated in **Toti v. Plymouth Bus Company** (1968), 281 F. Supp. 897, 898:

> "Moreover, a showing of inconvenience to the defendant is not enough to justify § 1404(a) relief, where transfer would merely place the inconvenience on the plaintiff. Miracle Stretch Underwear Corp. v. Alba Hosiery Mills, 136 F. Supp. 598, 511 (D. Del. 1956)."

See also **Scaramuzzo v. American Flyers Airline Corporation** (1966), 260 F. Supp. 746, 748.

II. No Basis for Extraordinary Writ of Mandamus.

The latest Supreme Court language on the issuance of mandamus is found in **Hubert R. Will v. United States** (1967), 389 U. S. 90, 95, 19 L. Ed. 2d 305, 310:

> "The peremptory writ of mandamus has traditionally been used in the federal courts only 'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.' Roche v. Evaporated Milk Assn., 319 U. S. 21, 26, 87 L. ed. 1185, 1190, 63 S. Ct. 938 (1943). While the courts have never confined themselves to an arbitrary and technical definition of 'jurisdiction,' it is clear that only exceptional circumstances amounting to a judicial 'usurpation of power, will justify the invocation of this extraordinary remedy. De Beers Consol. Mines, Ltd. v. United States, 325 U. S. 212, 217, 89 L. ed. 1566, 1572, 65 S. Ct. 1130 (1945)."

There is nothing in the instant case justifying invocation of the extraordinary remedy of mandamus. Trial in Springfield, Illinois, is no less convenient for all the parties and witnesses than is Chicago. CBS complains that it cannot have compulsory process to compel unwilling witnesses to come to Springfield. Likewise Plaintiff cannot compel unwilling witnesses to come to Chicago. Both parties have the remedy of compulsory process to compel the attendance of witnesses by subpoena for depositions as provided in Federal Rules 26(a) and 45(d).

Petitioner states that its radio station, WBBM, and its employees and pertinent files and records are in Chicago. These are all under the control of Petitioner. No reason has been presented why said employees, files and records, if pertinent, could not easily be brought to Springfield for the trial.

Petitioner complains that one of the many factors considered by the Court is the Plaintiff's choice of forum, "if the forum is one provided for by law." This is a valid factor for consideration. See **Time, Inc. v. Manning** (1966), 366 F. 2d 690, 698, 1 Barron & Holtzoff, **Federal Practice & Procedure** (Wright Ed., § 86.3), 1 Moore's Federal Practice, p. 1778. In **Rodriguez v. Pan American Life Insurance Co.** (1962), 311 F. 2d 429, 434, the Court said: "Plaintiff's privilege to choose, or not to be ousted from, his chosen forum is highly esteemed."

III. **Trial of This Case in the Southern District Will Not Chill First Amendment Rights But Removal May Chill Equal Justice Under Law Concepts.**

Counsel for CBS contends that requiring it to go to trial in a jurisdiction in which it is doing business and operates a large broadcasting facility, and which adjoins the district where it has its registered office and owns a large television and radio station will somehow have a "chilling effect upon First Amendment rights." No facts are cited in support of this strange conclusion. If the courts or the inhabitants of the Southern District were in any way prejudiced against CBS, then such might be the subject of a proper motion for transfer, but no such showing has been made or even alleged.

Respondent submits that the exercise of his admitted discretion does not convert this case into an "extraordinary cause" justifying the extraordinary writ of mandamus. Otherwise, every defendant in a case involving out-of-the-district witnesses would have an easy way to delay the trial for years by first asking transfer, then asking reconsideration, then petitioning for writ of mandamus, then a rehearing, and then petitioning for certiorari to the Supreme Court. If such a dilatory procedure is approved, it will make recourse to the Federal Courts too expensive for any but the largest corporations.

Counsel for Respondent assert that CBS is a corporation organized for profit which is entitled to fair treatment but not to any special or preferential treatment. Counsel invite the court's attention to the following language used by this Court to describe a similar large news-gathering organization in a case involving a somewhat similar plea of First Amendment privilege:

> ". . . we are not unmindful of the argument that newspaper publishers charged with combining cooperatively to violate the Sherman Act are entitled to have a different and more favorable kind of trial procedure than all other persons covered by the Act. . . . For equal—not unequal—justice under law is the goal of our society. Our legal system has not established different measures of proof for the trial of cases in which equally intelligent and responsible defendants are charged with violating the same statutes. Member publishers of AP are engaged in business for profit exactly as are other business men who sell food, steel, aluminum, or anything else people need or want. . . . The fact that the publisher handles news while others handle food does not, as we shall later point out, afford the publisher a peculiar constitutional sanctuary in which he can with impunity violate laws regulating his business practices."
>
> **Associated Press v. United States** (1944), 326 U. S. 1, 6-7, 89 L. Ed. 2013, 2023.

CONCLUSION

The Respondent complied with 28 U. S. C., § 1404(a). His exercise of discretion is not subject to review absent an extraordinary cause which this is not. He respectfully

requests this Court to deny the Petition for Writ of Mandamus or certiorari.

Respectfully submitted

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